

Appendix 22 B

Qualification for the special pre-retribution distribution

A report for the policyholder advocate in connection
with the retribution of the inherited estates
of the CGNU Life and CULAC with-profits funds

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1.00 Introduction

Reference is made to the Aviva appendix entitled “Qualification for pre-retribution distribution” which addresses the eligibility criteria for a special distribution from the inherited estates of the CGNU Life and CULAC with-profits funds.

The policyholder advocate is engaged in accordance with FSA Rules to represent the interests of policyholders in relation the reattribution and strictly not in relation to any pre-retribution distribution. Nevertheless, the policyholder advocate feels that she can and should comment on the proposals for a special distribution to the extent that they impact the fair treatment of policyholders in the reattribution.

The policyholder advocate’s view is that the terms of a pre-retribution distribution, particularly the level at which a distribution is triggered within Aviva’s risk appetite framework, has direct implications for the extent and timing of excess surplus distributions in the future, to which Aviva will have had regard in determining its reattribution policyholder incentive payment. There is therefore an issue as to whether the balance of a pre-retribution distribution and the policyholder incentive payment is fair between groups of policyholders. This is particularly the case since, as this appendix explains below, Aviva’s qualification criteria for its special distribution are different from its eligibility criteria for the reattribution.

2.00 Qualification for the Special Distribution

Aviva provide in its appendix that any with-profits policy in the relevant funds which is in force on the effective date of the distribution (as distinct from the effective date of the reattribution) will qualify for the distribution. The appendix goes on to state that the special distribution qualification criteria “take no account of the policyholders’ eligibility for reattribution”.

The appendix also records Aviva’s announcement in February 2008 that it would be making special distributions worth an estimated £2.1bn, but that these would be made over a three year period. Qualification is assessed separately for each of the three years. A policyholder qualifies for the first distribution if the policyholder has a with-profits policy in either the

CGNU Life or CULAC funds on the 1 January 2008, for the second if the policyholder remains invested in the same fund on 1 January 2009 and likewise on 1 January 2010 for the third payment.¹

Aviva's proposition is that the special distributions from the CGNU Life & CULAC inherited estates are made on a "business as usual" basis and that they are therefore independent of the reattribution.

3.00 Alignment of Qualification/Eligibility Criteria

The policyholder advocate's view is that the special distribution and reattribution are in substance part of the same transaction for Aviva. Accordingly the qualification criteria for a distribution and the eligibility for the reattribution should in principle be aligned, to the extent that any policyholder who is eligible for the reattribution would also qualify for any pre-reattribution distribution. If there was such an alignment, there would be a separate question as to whether a policyholder should qualify for the distribution even if he is not eligible for the reattribution (e.g. where the policy came into force after A Day – see below) but the policyholder advocate acknowledges that this would essentially be a matter for Aviva.

As a general matter, aligning the criteria would, from a policyholder perspective, have the merit of simplicity. Policyholders are likely to regard Aviva's proposals as a piece and the subtleties of the distinction between a special distribution and a reattribution payment may not be readily understood by many policyholders. Separate qualification/eligibility criteria for a distribution and a reattribution payment may also be regarded as unfair for some policyholders for the reason given below.

The basic eligibility criteria for a reattribution policyholder incentive payment are that the relevant policy should be invested in the with-profits funds of CGNU Life or CULAC and in force both on the date on which Aviva announced the Policyholder Advocate's formal appointment (*A Day*) and on the date on which the reattribution is implemented (*E Day*).

¹ If Aviva's fund transfer proposals proceed, qualification for distributions taking place after the fund transfer will be adjusted to reflect the fact that former CGNU Life/CULAC policyholders will be invested in a new fund after the transfer.

However, in some circumstances (essentially non-voluntary surrenders and terminations) a policyholder remains eligible for a reattribution payment even though his policy was terminated between A Day and E Day. In these circumstances the policyholder would not necessarily qualify for the first distribution under Aviva's distribution qualification criteria, or may qualify for the first distribution but not the second and third (i.e. if his policy terminated before the effective date of the second and third stages of the distribution). That policyholder may think it unfair that for reasons beyond the policyholder's control, he/she will receive a smaller payment than would have been received had there been no distribution or had he been eligible for all three payments.

The policyholder advocate recognises that aligning the qualification/eligibility criteria for the special distribution and the reattribution payment in the manner suggested does raise issues. There may, for example, be tax inefficiencies for policyholders if the distribution is paid in cash (as it would have to be for a policyholder whose policy had terminated before the date of the distribution) rather than by way of additional policy benefits. There may also be a legal question as to whether Aviva can make a distribution to former policyholders. These issues may not however have been insuperable – for instance, if there were a legal impediment to Aviva making a special distribution to former policyholders then that could have been addressed in the Scheme under which the fund transfer and reattribution of the CGNU Life and CULAC with-profits funds will be effected.

Nevertheless, the policyholder advocate acknowledges that Aviva, having addressed the various legal and practical considerations, decided that it could not align the qualification/eligibility criteria for a special distribution from, and a reattribution of, its inherited estates in the CGNU Life and CULAC funds.

4.00 Phasing of the Special Distribution

Notwithstanding the policyholder advocate's acknowledgement of Aviva's position on the issue of aligning the qualification/eligibility criteria for a distribution and the reattribution, she does not accept that Aviva's decision to phase its special distribution over three years

strikes a fair balance between different policyholder groups. The policyholder advocate's reasons for reaching this view are set out in Appendix 36 (The pre-retribution distribution).